

Kentucky COVID-19 Actions and Guidance Related to Telehealth

3/30/2020

ORGANIZATION	ACTIONS AND GUIDANCE	EFFECTIVE
Governor's Office	<p>State of Emergency Relating to COVID-19 virus, a public health emergency – Executive Order 2020-215 https://governor.ky.gov/attachments/20200306_Executive-Order_2020-215.pdf</p> <p>I, Andy Beshear, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by Chapter 39A of the Kentucky Revised Statutes, declare that a State of Emergency exists in the Commonwealth of Kentucky and do hereby order and direct the issuance of appropriate state active duty orders for the necessary officers, troops, personnel, equipment, including the resources of the Kentucky National Guard and other logistical support necessary for an immediate response to the novel coronavirus (COVID-19) emergency in the Commonwealth.</p>	3/06/2020
Department of Medicaid Services	<p>Provider Letter A-105 COVID-19 Guidance https://chfs.ky.gov/agencies/dms/ProviderLetters/dmsproviderletterCOVID19.pdf</p> <p>Waiving all cost sharing for services associated with COVID-19, encouraging the use of telehealth through HIPAA compliant technology, when possible, and adding the following codes on a temporary basis for brief communications with established patients:</p> <ul style="list-style-type: none"> • G2012 to be utilized for telephone calls between physician and patient, including FaceTime; and • G2010 to be utilized for remote evaluation, such as email, of recorded video or images submitted by a patient. • Eliminating prior authorizations for COVID-19 related services, including hospitalizations and office visits. • Allowing early refill to allow 30, 60, or 90-day supply of medication. <p>DMS will follow Medicare policy regarding reimbursement for codes U0001, U0002, G2012, and G2010. The codes will be retroactively effective on February 4, 2020, but will not be billable until after April 1. MCOs are implementing the same policies related to identification and treatment of COVID-19.</p>	3/11/2020
Governor's Office	<p>State of Emergency Relating to Social Distancing - Executive Order 2020-243</p> <p>All state agencies, including cabinets, departments, boards, commissions, and other Executive Branch entities charged with enforcing statutes or regulations, shall issue any orders or memoranda necessary to clarify the suspension of any statutory or regulatory provision that is suspended pursuant to this Order, subject to the approval by the Office of the Governor or the Cabinet Secretary to which the state agency is administratively attached under KRS 12:020.</p> <p>2.(a) providing services and conducting operations by mail, internet, telephone, and video teleconferences, to the extent practicable.</p>	3/13/2020
Department of Medicaid Services	<p>Statement of Emergency – 907 KAR 1:604E https://governor.ky.gov/attachments/20200313_State-of-Emergency_907-KAR-1-604E.pdf</p> <p>This emergency administrative regulation is being promulgated to remove copayment requirements for 1915(c) waiver enrollees and members receiving services within long-term care facilities, waive Medicaid copayments under circumstances relating to an emergency declaration, clarify additional circumstances where the department may waive cost-sharing in response to an actuarial analysis if federal approval is received, clarify that pregnant women are fully exempt from Medicaid copayments, remove references to a nonfunctioning federal waiver, and clarify that managed care organizations may reduce or eliminate copayments for their enrollees.</p>	3/13/2020
Department of Medicaid Services	<p>1915(c) Home and Community Based Services Waiver Providers https://chfs.ky.gov/agencies/dms/ProviderLetters/1915ctelehealthcovid19providerletter.pdf</p> <p>Effective immediately, case managers may conduct visits with waiver participants online or by phone. Case managers need to ensure meetings are conducted in a Health Information Portability and Accountability Act (HIPAA)-compliant manner.</p>	3/13/2020

ORGANIZATION	ACTIONS AND GUIDANCE	EFFECTIVE
	<p>Current statutes and regulations allow Medicaid providers to use telehealth as a delivery method for most covered services. Telehealth is defined in Kentucky Revised Statute 205.520(15), which mandates the use of HIPAA-compliant telehealth platform.</p> <p>1915(c) HCBS waiver providers who possess this technology and wish to use it should keep the following in mind:</p> <ul style="list-style-type: none"> • Services should be provided within the scope of the provider's licensure and be compliant with Kentucky Administrative Regulation 907 KAR 3:170. • Only services that can reasonably be provided online should be delivered via telehealth. Services requiring hands-on care, such as Homemaking or Personal Care, should be delivered in person. Please see the guidance DMS issued to 1915(c) HCBS waiver providers on March 11 regarding the safe delivery of services during the COVID-19 outbreak. The letter is available at https://chfs.ky.gov/agencies/dms/ProviderLetters/1915cproviderletterCOVID19.pdf 	
Kentucky Board of Medical Licensure	<p>Instructions for Registration of Health Practitioners in Response to Emergency https://kbml.ky.gov/Documents/Registration%20for%20Health%20Practitioners%20in%20Response%20to%20Emergency.pdf</p> <p>Medical and Osteopathic physicians not already licensed to practice in the Commonwealth of Kentucky, may register to practice within Kentucky during this state of emergency as follows:</p> <ul style="list-style-type: none"> • Complete and submit the Emergency System Application for Health Practitioners provided on the Board's website • No fee is required for this type of registration 	3/17/2020
Department of Medicaid Services	<p>Provider Letter A-106 COVID-19 Guidance – Telehealth https://chfs.ky.gov/agencies/dms/ProviderLetters/behavioralhealthcovid19.pdf</p> <p>Licensed behavioral health providers can deliver services via telehealth, with the exception of residential substance use disorder treatment services and residential crisis services. All providers delivering care via telehealth must comply with all telehealth regulations, including synchronous, two-way video on a HIPAA secure link. DMS will allow the following services to be conducted via telehealth or telephone on a temporary basis:</p> <ul style="list-style-type: none"> • Targeted Case Management (all types) • Peer Support Services • Community Support Services <p>MCOs are implementing the same policies related to identification and treatment of COVID-19.</p>	3/17/2020
Cabinet for Health and Family Services	<p>Directive Elective Procedures https://governor.ky.gov/attachments/20200323_Directive_Elective-Procedures.pdf</p> <p>Aggressive social distancing measures have been mandated by emergency order as a necessary measure to limit and contain the spread of the COVID-19 infection. As a consequence of these mandates:</p> <ol style="list-style-type: none"> 1. ALL non-emergent, non-urgent in-person medical, surgical, dental, and any other healthcare practice or procedure must have immediately ceased effective close of business on March 18, 2020. 2. The Commonwealth of Kentucky relies upon licensed healthcare professionals within the state to exercise their best clinical judgment in the implementation of this restriction. 3. To assist licensed healthcare professions in the exercise of their judgment, the following guidelines are offered: <ol style="list-style-type: none"> a. Emergent – Any healthcare service that, were if not provided, is a high risk of resulting in serious and/or irreparable 	3/18/2020

ORGANIZATION	ACTIONS AND GUIDANCE	EFFECTIVE
	<p>harm to a patient if not provided within 24 hours.</p> <ul style="list-style-type: none"> b. Urgent – Any healthcare service that, were it not provided, is a high risk of resulting in serious and/or irreparable harm to a patient if not provided within 24 hours to 30 days. c. Non-Urgent – Any healthcare service that, were it not provided, is unlikely to result in any serious and/or irreparable harm to a patient if not provided for more than 30 days. (For example, chiropractic medicine) <p>4. When considering the above guidance, clinicians are urged to consider whether the service provided would still be retrospectively deemed necessary if the patient (or close contact of the patient) were to become infected to COVID-19 as a result and suffer serious and/or irreparable harm as a result.</p> <p>5. Under all circumstances where clinically possible, use of telephone or video communication to provide telemedicine services is strongly urged. Medicare and Medicaid have WAIVED typical telemedicine and HIPAA requirements and you may even use non-HIPAA compliant video services such as FaceTime, Skype, and others during the current state of emergency.</p> <p>All healthcare providers are instructed to follow these recommendations when considering what procedures to cancel. This directive became effective at midnight March 18, 2020.</p>	
Department of Insurance	<p>Telehealth Remote Communications</p> <p>http://insurance.ky.gov/ppc/Documents/TelehealthRemoteCommunicationsGuidance.pdf</p> <p>DOI will not impose penalties for noncompliance with KRS 304.17A(47)(c) in connection with the good faith provisions of telehealth using such non-public facing audio or video communications products. Insurers cannot require that the patient have a prior relationship with the provider in order to have services delivered through telehealth, if the provider determines that telehealth would be medically appropriate.</p>	3/18/2020
Professional Licensure Boards Without Telehealth Statutes	<p>Legal Opinion</p> <p>For boards that do not have statutes which require them to regulate telehealth, they can practice telehealth as long as they abide by state and federal law governing telehealth and their own codes of ethics. Their ethics codes would require that they practice only in their area of competence, which would include competence with the platform they are using.</p>	3/19/2020
Department of Medicaid Services	<p>907 KAR 3:300. Enhanced and suspended Medicaid services and requirements if there is a declared national or state emergency</p> <p>https://apps.legislature.ky.gov/law/kar/907/003/300E.pdf</p> <p>Enhanced or Expanded Medicaid Benefits. Medicaid services and requirements that may be enhanced or expanded include:</p> <ul style="list-style-type: none"> (1) Any appropriate health service related to or rationally related to the declared emergency; (2) Telehealth services, which may include: <ul style="list-style-type: none"> (a) Those services that are otherwise designated as face-to-face only through Title KAR; (b) The use of equipment, such as a telephone or store-and-forward telehealth, including: <ul style="list-style-type: none"> 1. Remote patient monitoring, as appropriate; or 2. Any other telehealth service for which an evidence base exists to justify the safety and efficacy of the service when provided as asynchronous telehealth; 3. The introduction or expansion of any appropriate telecommunications or electronically mediated health services as allowable pursuant to federal law; or 4. “Telehealth” or “telehealth service” or “telehealth consultation” as it is defined throughout 907 Title KAR, which shall be equivalent to an in-person service or a service requiring physical presence. 	3/19/2020

ORGANIZATION	ACTIONS AND GUIDANCE	EFFECTIVE
	Provider Enrollment. In response to a declared national or state emergency, the department may: (a) Simplify any existing provider enrollment process to meet an existing or anticipated demand for health services Medicaid Partner Portal Enrollment - https://chfs.ky.gov/agencies/dms/dpi/pe/Pages/mppa.aspx Medicaid Point of Contact for New Enrollments - (502) 564-5472 x2150 to expedite enrollment.	
Board of Social Work	KRS 335.158 Telehealth https://bsw.ky.gov/Documents/3-19-20-Message-from-Dr.-Jay-Miller-COVID-19.pdf Until the state of emergency is lifted, and in order to meet the mandates of social distancing, “treating clinical social worker” for purposes of providing telehealth services under the provisions of this statute, shall include CSWs that are under board-approved clinical supervision of an LCSW supervisor. This expanded definition will only apply until the state of emergency is lifted.	3/19/2020
Kentucky Board of Nursing	Instructions for Registration of Health Practitioners in Response to State of Emergency https://kbn.ky.gov/Pages/default.aspx Pursuant to the CHFS Directive, the Good Samaritan Act of 2007, KRS 39A.350-366 and KRS 314.101(1)(a) the KBN has created a registry and application process for nurses and board certified dialysis technicians to practice in the Commonwealth during the state of emergency.	3/20/2020
Public Health Rehabilitation Services	Interim Guidance Regarding Rehabilitation Services and to Order the Temporary Closure of Outpatient Rehabilitation Centers due to COVID-19 https://chfs.ky.gov/CV19/RehabServicesguidance.pdf	3/20/2020
Public Health Early Intervention Services	Emergency Regulation 902 KAR 30:010E https://apps.legislature.ky.gov/law/kar/902/030/010E.pdf Early intervention services and requirements may be enhanced to allow for tele-intervention services when a national or state public health emergency has been declared	3/20/2020
Kentucky Labor Cabinet	Telehealth Services During State of Emergency for Kentucky Workers’ Compensation https://labor.ky.gov/Documents/Telehealth%20COVID-19.pdf Telehealth and telephysical therapy services should be promoted and utilized when appropriate in order to prevent the spread of disease and provide for continuity of care to injured workers pursuant to KRS 342.020.	3/23/2020
Applied Behavioral Analyst Licensing Board	http://aba.ky.gov/Documents/Memorandum%20re%20EO%202020-0243-ABA.pdf Pursuant to EO 2020-215 and EO 2020-243, the Board is clarifying that the following provisions are suspended, pursuant to Executive Order 2020-243, during the State of Emergency contained in Executive Order 2020-215 as related to COVID-19: <ul style="list-style-type: none"> • 201 KAR 43:100, Section 1. Requirements for Licensees Providing Applied Behavior Analytic Services via Telehealth: Under Section 1(2), the provision that applied behavior analysis with a client shall not commence via telehealth is suspended. • 201 KAR 43:100, Section 1. Requirements for Licensees Providing Applied Behavior Analytic Services via Telehealth: Sections 1(2)(a) and (b), which require an initial in person meeting for the licensee and client who plan to utilize telehealth services is suspended. • 201 KAR 43:100, Section 1. Requirements for Licensees Providing Applied Behavior Analytic Services via Telehealth: Section 1(2)(b)5, which requires that at the initial meeting with the client, the licensee shall obtain the client’s written consent, is suspended. 	3/25/2020

ORGANIZATION	ACTIONS AND GUIDANCE	EFFECTIVE
	<ul style="list-style-type: none"> 201 KAR 43:100, Section 2. Jurisdictional Considerations: Subsection (1), which requires that a person providing applied behavior analytic services via telehealth to a person physically located in Kentucky while services are provided shall be licensed by the Board, is suspended 201 KAR 43:100, Section 2. Jurisdictional Considerations: Subsection (2), which requires that a person providing applied behavior analytic services via telehealth from a physical location in Kentucky shall be licensed by the board and may be subject to licensure KentuckyUnbridledSpirit.com An Equal Opportunity Employer M/F/D requirements in other states where the services are received by the client, is suspended. <p>There is currently no prohibition preventing qualified supervisees from providing applied behavior analytic services via telehealth as long as they are properly supervised by a licensee.</p> <p>Additionally, when providing supervision, licensees must operate in accordance with the BACB's Professional and Ethical Compliance Code for Behavior Analysts (https://www.bacb.com/wpcontent/uploads/BACB-Compliance-Code-english_190318.pdf) whether or not services are provided face-to-face or via telehealth.</p>	
Department of Medicaid Services	Provider Telehealth or Telephonic Health Services FAQs https://chfs.ky.gov/agencies/dms/Documents/ProviderTelehealthFAQs.pdf	3/25/2020
Board of Speech-Language Pathology and Audiology	<p>Pursuant to EO 2020-215 and EO-2020-243, the Board is clarifying that the following provisions are suspended during the State of Emergency contained in Executive Order 2020-215 as related to COVID-19:</p> <ul style="list-style-type: none"> 201 KAR 17:110, Section 2. Client Requirements: Under Section (2), the provision that a practitioner-patient relationship shall not commence via telehealth is suspended. During the State of Emergency contained in Executive Order 2020-215, speech-language pathologists and audiologists may commence relationships with patients via telehealth. No initial in-person consultation is required. 201 KAR 17:110, Section 2. Client Requirements: Since licenses are no longer required to conduct the initial, in-person meeting, the requirements of the initial, in-person meeting with the client found in Section 2(1) through Section 2(5), are suspended. 201 KAR 17:110, Section 3(3): During the State of Emergency, the Department of Health and Human Services has agreed to waive potential HIPAA violations for telehealth services provided on platforms that are not HIPAA compliant. Therefore, the requirement that licenses utilizing telehealth and telepractice must utilize "authentication and encryption technology" is suspended. 	3/25/2020
Governor's Office	State of Emergency Relating to Healthy at Home – Executive Order 2020-257 https://governor.ky.gov/attachments/20200325_Executive-Order_2020-257_Healthy-at-Home.pdf <p>This Order is issued to take additional steps to encourage Kentuckians to remain Healthy at Home, and to do everything in their power to stop the spread of the disease. This Order should be construed broadly to prohibit in-person work that is not necessary to protect or sustain life.</p>	3/25/2020